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CAP. XLIX.

The Tenant's Plea in a Writ of Dower.

In a Writ of Dower, called *Unde Nihil habet*, the Writ shall not abate by the Exception of the Tenant, because she hath received her Dower of another Man before her Writ purchased, unless he can shew that she hath received part of her Dower of himself, and in the same Town, before the Writ purchased.

En briefe de Dower, dont dame reins nad, ne soit le briefe abatus per exception del tenant, pur ceo que el avera resceive son dower de auter home avant son briefe purchase, sil ne puit monstre que el eit resceive part de sa dower de luy mesme, & en mesme la ville avant son briefe purchase.

2 Inst. 261. Regist. 170, 171. Fitz. Voucher, 196. Fitz. Dower, 75, 76, 86, 89, 114. Kel. 128.

At common law where the widow had received parcel of her dower of any one tenant in any one county or town, the words of the writ of dower *unde nihil habet* did not serve her, and the defendant therefore might plead the receipt by her of this parcel, however small it may have been, in abatement of the writ, Bac. Abr. Dow. M. But now by this Act three things are required before such a plea would be sustained. First. The dower must have been received from the same tenant, and therefore if the husband enfeoff A. of Whiteacre and B. of Blackacre, both in the same town, and the wife receives dower of A. she shall notwithstanding have dower *unde nihil habet* against B. by the express purview of the Act, for he is not the same tenant from whom she received her dower. And if the husband had after marriage made a lease for life of Blackacre, and then granted Whiteacre and the reversion of Blackacre to A. in fee, and the wife had received dower from A. in Whitacre, and then the lessee for life had died, she might maintain this action against A. for dower in Blackacre, for "the same tenant" means such a tenant of both the one land and the other, as at the time of the receipt of dower by the wife would have been liable to her in such an action; but here at the time of the receipt of the dower by her from A., the lessee for life was tenant of the freehold of Blackacre. Second. It must have been received in the same town. A town in England had a well settled signification, being any number of houses, to which belonged a regular market and which was not a city or the see of a bishop, and which being separated from the body of the shire enjoyed privileges equivalent to those now enjoyed by a modern corporation. According to Lord Coke, Co. Litt. 115 b. town is the *genus* and borough the *species*, and he says it cannot be a town, unless it hath or in time past had a church and celebration of divine service, sacraments, and